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THE ANDHRA PRADESH GAZETTE
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PART II - MISCELLANEOUS NOTIFICATIONS OF INTEREST TO THE PUBLIC

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NOTIFICATIONS BY HEADS OF DEPARTMENTS Etc.,

**I ADDL. SENIOR CIVIL JUDGE'S COURT,
GUNTUR.**

Saturday, the 22nd day of July, 2023

INSOLVENCY PETITION NO.8/2016

Between:

Bathina Rama Krishna, S/o Koteswara Rao, Hindu, aged about 35 years, Business, R/o Mamillapalli Village of Ponnur Mandal, Guntur District.

...PETITIONER.

AND

1. Shaik Vali @ Shaik Mastan Vali, S/o China Mastan, Muslim, aged about 55 years, Agriculture, R/o Dr.No.5-110, Mamillapalli Village, Ponnur Mandal, Guntur District.
2. Shaik Siva S/o Shaik Vali @ Shaik Mastan Vali, Muslim, aged about 31 years, Agriculture, R/o Dr.No.5-66/1, Mamillapalli Village of Ponnur Mandal, Guntur District.
3. Official Receiver, Court Compound, Guntur.

...RESPONDENTS.

This petition coming on 11.07.2023 for final hearing before me in the presence of Sri Mallela Eresu, Advocate for petitioner and Sri B. Ram babu, Advocate for R1 and R2, and the matter having stood over for consideration till this day, this Court made the following:-

:: ORDER ::

1. This insolvency petition is filed for the following reliefs:
 - i) to adjudge the first respondent as an insolvent,
 - ii) to Cancel the Registered Gift Deed dated 30.07.2015,
 - iii) to vest the petition schedule properties with the official receiver for administration,
 - iv) for the costs of the petition and
 - v) to pass such other reliefs as the Court deems fit and proper in the circumstances of the case.
2. The main case of the petitioner, in brief, is that,
 - i) first respondent is the father of the second respondent.
 - ii) The first respondent borrowed a sum of Rs. 60,000 on 20.5.2015 and another Rs. 60,000 on 26.5.2015 from the petitioner for his family and agricultural expenses and executed promissory notes on respective dates, agreeing to repay the same with interest at 18% p.a.
 - iii) Subsequently, in spite of repeated demands, the first respondent did not choose to repay the same. Instead of repaying the debt, the first respondent executed a registered gift deed dated 30.7.2015 in favour of the second respondent with intend to defeat and delay the claim of the petitioner. Except petition schedule property, the first respondent has no other properties.
 - iv) On 2.9.2015 petitioner got issued legal notice to the first respondent. On receipt of the same, first respondent got issued reply

notice dated 18.9.2015 with false and untenable allegations. Later, he filed suits in O.S. No. 102/2015 and O.S. No. 103/2015 on the file of Prl. Junior Civil Judge, Ponnur, and the same are pending. Further, the first respondent is trying to leave the jurisdiction after making a fraudulent transfer of the petition schedule property in favour of the second respondent. Thereby, he committed the act of insolvency. Hence, the present petition is filed, urging the Court to adjudge the first respondent as insolvent and cancel the gift deed dated 30.7.2015.

3. On the other hand, respondents 1 and 2 resisted the claim of the petitioner by filing a counter. The second respondent filed a counter. The first respondent filed a memo adopting the counter of the second respondent. They denied the borrowing amount and execution of promissory notes, except the relationship between respondents 1 and 2 as averred in the petition. The main case of respondents 1 and 2, in brief, is that:

i) second respondent is the eldest son; Shaik @ Noor Basha Prasad is the younger son; and Shaik Ashabi is daughter of first respondent. The first respondent performed the marriages of all three of his children, and they are living separately. He has a house and landed properties, and they were given to his children. The petition schedule property was given to the second respondent by way of a gift deed dated 30.7.2015. As such, the second respondent is the absolute owner of the petition schedule property. Since the first respondent conveyed rights to the second respondent, the first respondent has no right whatsoever therein.

ii) (1) Punna Hema Sundara Rao, (2) Ponnaganti Pulla Rao, (3) Battena Rama Krishna, (4) Martha Kishore, (5) Ala Sambaiah, (6) Suda Samudraiah, (7) Battena Srinivasa Rao, (8) Kurakula Anjaneyulu, (9) Noor Basha Kasim Bi, (10) Tolasuri Sirkanth, (11) Paladugu Lakshmi, (12) Jetti Mahesh, (13) Puppala Anjaneyulu, (14) Kumba Ramudu and others belonging to Mamilla Palli and Thottempudi villages conspired themselves with a malafide intention to grab the property standing in the names of respondents 1 and 2, and they fabricated some promissory notes and filed suits against the first respondent on the file of Principal Junior Civil Judge Ponnur and also filed the present I.P. and I.P.7/2016 with false allegations.

iii) Further, they threatened all the family members of the first respondent with dire consequences for not attending court and obtained decrees against the first respondent fraudulently and mischievously. However, the first respondent also preferred applications to set aside the ex-parte decrees, which are pending before the Principal Junior Civil Judge, Ponnur.

iv) In fact, he never executed any promissory notes as mentioned in the petition or any other promissory note either in favour of the petitioner or in favour of any other person. Of course, he has no need to borrow the alleged amounts. Hence, the claim of the petitioner based on promissory notes is not true and genuine.

v) The younger son of first respondent by the name of Shaik @ Noor Basha Prasad used to do paddy business with maintaining travels, tent house and private chits. He sustained heavy debts and was forced to sell off properties given to him by the first respondent to discharge some of the debts. Now, he is not in a position to discharge his debts. Thereupon, he filed I.P. 22/2015 against 101 respondents, including the present petitioner. The said I.P. is pending before Senior Civil Judge, Bapatla.

vi) Prior to filing the said I.P. 22/2015, the aforesaid persons terrorized all the family members and children of the first respondent by looting the movable and immovable properties as well as outraged the modesty of female family members. In view of the circumstances, all the family members of the first respondent's children as well as the first respondent family were forced to leave Mamillapalli village.

vii) Petitioner Pulla Rao and Punna Hema Chander highhandedly obtained the signatures of the first respondent on blank promissory notes by putting him under threat, with a malafide intention to grab the property instead of taking action to collect the debts from Shaik @ Noor Basha Prasad. Thus, promissory notes filed in the suits were obtained in this manner. Therefore, the first respondent has no other liability.

viii) But the petitioner obtained exparte decrees in O.S. 102/2015 and 103/2015 fraudulently and unlawfully by threatening him not to attend court. Therefore, the decrees are not executable. The first respondent never committed any act of insolvency, and the gift deed

executed by the first respondent in favour of the second respondent is not collusive or fraudulent. Hence, they urged the court to dismiss the petition.

4. **Now the points for determination are:-**

1. Whether 1st respondent committed act of Insolvency, if so, he is liable to be adjudged as an insolvent?

2. Whether registered Gift deed dated 30.07.2015 should be annulled as prayed for?

5. During the course of enquiry, the petitioner examined P.W. 1, while relying on Exs.P1 to P4. On the other hand, respondents 1 and 2 examined themselves as R.Ws.1 and 2 and Ex.R.1 to R.7 are marked.

6. Heard arguments on both sides. Written arguments of respondents 1 and 2 are filed.

7. Perused the record.

8. Before embarking on an appreciation of the above points, it is apropos to mention the admitted facts observed by this court on perusal of pleadings, oral and documentary evidence of both parties are as follows:

i) first respondent has three children; they are the second respondent, Shaik @ Noor Basha Prasad, and Shaik Ashabi.

ii) First respondent executed the registered gift deed/original of Ex.P2 in favour of second respondent, to which, other children of first respondent, i.e., Shaik @ Noor Basha Prasad and Shaik Ashabi stood as attestors. The younger son of first respondent Shaik @ Noor Basha Prasad filed I.P. No. 22/2015 on the file of Senior Civil Judge, Bapatla. The said I.P. was allowed by adjudging him as insolvent.

iii) Ponnaganti Pulla Rao also filed I.P.7/2016 against the first respondent herein to adjudge the first respondent herein as insolvent.

iv) Petitioner herein filed two suits, O.S.102/2015 and O.S.103/2015, on the file of Principal Junior Civil Judge Ponnur and obtained decrees therein.

P O I N T N O . 2 :-

Whether registered Gift deed dated 30.07.2015 should be annulled as prayed for?

9. It is the case of the petitioner that, to defeat and delay his claim, the first respondent executed a sham and nominal Regd. Gift Deed dt.30.07.2015 and therefore, it is liable to be annulled. On the other hand, respondents 1 and 2 refuted the same, contending that there are no malafides in executing a gift deed and, hence, the gift deed shall not be annulled.

10. In view of the rival contentions of both parties, this Court has to examine whether the Insolvency Court can annul a gift transaction simultaneously with the adjudication of the insolvent. To decide this question, it is desirable to read the provisions of the Provincial Insolvency Act, more particularly, Sections 53, 54, and 54-A of the Act.

11. Section 53 of the Act envisages that any voluntary transfer made by the debtor if the transferor is adjudged as insolvent can be avoided. Section 54 of the Act enumerates that every transfer of property, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as he become due from his own money in favour of any creditor and giving preference over the other creditors, and if such person is adjudged insolvent on a petition presented, shall be deemed to be fraudulent and void against the receiver, and shall be annulled by a Court saving transaction entered into in good faith and for valuable consideration.

12. A fraudulent transfer under Section 53 of the Act and a transaction to give fraudulent preference under Section 54 of the Act are void against the receiver, and they shall be annulled on the petition filed within a specific time. Section 54-A of the Act specifies the procedure for annulment of any transfer under Sections 53 or 54 of the Act. According to it, for annulment of any transfer under Sections 53 or 54 of the Act, a petition may be presented by a receiver, or with the leave of the Court, by any creditor who has proved his debt and who satisfies the Court that the receiver has been requested and has refused to make such a petition.

13. In view of the language used in Sections 53 and 54 of the Act, more particularly, the words "*if the transferor is adjudged insolvent*" under Section 53 of the Act and "*if the person is adjudged insolvent*" under Section 54 of the Act indicate that, for annulling a transaction of transfer, the debtor must be adjudged insolvent. So, to annul a transaction of transfer, a pre-condition is adjudging the debtor as insolvent.

14. But, herein the case on hand, the petition was filed by the creditor seeking two reliefs both under Sections 9 and 53, 54 of the Act, adjudging the first respondent as insolvent and annulling the transaction covered by registered Gift deed dt.30.07.2015. Thus, he sought two reliefs, simultaneously. The relief of annulment of the gift deed claimed by the petitioner/creditor is against the spirit of the language used under Sections 53, 54, and 54-A of the Act.

15. In Tadikondala Venkata Ramana and another Vs. P.Santhakumari and others¹, the Hon'ble composite High Court held at para no.25 as follows:

25. In the instant case, by the date of filing the petition, seeking annulment under Section 53 or 54 of the Act, the petitioner was not even adjudged as insolvent. So, the first condition was not satisfied. The petitioner did not approach the Official Receiver and proved his debt as contemplated under Part-III of the Act and complied Section 54-A of the Act. Thereby, the order annulling the sale transaction covered by sale deeds dated 10.03.2004 vide document Nos.2605 of 2004 and 2606 of 2004 passed by the trial Court as confirmed by the appellate Court, is erroneous ex facie and contrary to provisions of Act. Hence, the orders of the trial Court and the appellate Court to the extent of annulling the sale deeds dated 10.03.2004 vide document Nos.2605 of 2004 and 2606 of 2004, is illegal and the same is liable to be set aside. However, the petitioner is at liberty to move an application after compliance of Sections 45 to 50 and 54-A of the Act to annul the transfer of immovable property under Sections 53, 54 or 4 of the Act.

16. In *Dara Mohan Muralidhar and Others Vs. B.Nirmala Devi and another*², the Hon'ble Composite High Court held at para no.31 as follows,

[31] This Court held that the transaction covered by any registered document amounts to an act of insolvency under Section 6(1)(b) of the Act. It cannot be annulled except on an application filed under Sections 53 and 54 of the Act after compliance of procedure prescribed under Sections 45 to 50 and 54-A of the Act.

17. A conspectus of the above authorities is that, unless the debtor is adjudged as insolvent, the next stage of proof of debt as contemplated under sections 45 to 50 and 54-A of the Act does not arise. After proof of debt, on an application filed under Sections 53 and 54 of the Act, a separate enquire will be conducted on the annulment of a register document by complying with procedure.

18. In the present case, this petition is filed to adjudge the first respondent as insolvent and annul registered gift deed dt.30.07.2015/Ex.P2 executed in favour of second respondent. Thus, he sought two reliefs simultaneously, and the relief claimed by the petitioner/creditor with regard to annulment of the gift transaction is against the spirit of the language used under Sections 53 and 54-A of the Act. In view of the above authorities, at this stage, registered gift deed dt.30.07.2015 cannot be annulled. There is separate procedure laid down under Sections 53, 54, and 54-A of the Act. Accordingly, this point is answered.

P O I N T N O . 1 :

Whether 1st respondent committed act of Insolvency, if so, he is liable to be adjudged as an insolvent?

19. It is the case of the petitioner that the first respondent borrowed Rs. 60,000 on 20.5.2015 and Rs. 60,000 on 26.5.2015 from the petitioner for his family and agricultural expenses, agreeing to repay the same with interest at 18% p.a. Subsequently, instead of discharging the debts, he executed a registered gift deed in favour of the second respondent conveying the petition schedule property with intend to defraud and delay his claim to recover promissory note debt, and thereby, the first respondent committed an act of insolvency and is liable to be adjudged as insolvent.

20. On the other hand, the respondents 1 and 2 recusant the case of petitioner contending that the gift deed executed by the first respondent is a genuine transaction and that the alleged promissory notes are fabricated and were obtained by putting the first respondent under threat, and therefore, no malafides can be attributed to the gift deed.

21. This is a creditor I.P. filed under Section 9 of the Act to adjudge the first respondent as insolvent. So, it is appropriate to discuss what the

ingredients are to be complied with to adjudge the debtor as insolvent under Section 9 of the Act. It is fruitful to mention Section 9 of the Act hereunder:

9. Conditions on which creditor may petition.—(1) A creditor shall not be entitled to present an insolvency petition against a debtor unless—

(a) the debt owing by the debtor to the creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to such creditors, amounts to five hundred rupees, and

(b) the debt is a liquidated sum payable either immediately or at some certain future time, and

(c) the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition:

Provided that where the said period of three months referred to in clause (c) expires on a day when the Court is closed, the insolvency petition may be presented on the day on which the Court re-opens.

(2) If the petitioning creditor is a secured creditor, he shall in his petition either state that he is willing to relinquish his security for the benefit of the creditors in the event of the debtor being adjudged insolvent, or give an estimate of the value of the security. In the latter case, he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated in the same way as if he were an unsecured creditor.

22. The above provision mandates compliance with three conditions: one is that a debt of Rs. 500/- or above is owed to a creditor or two or more creditors; second is, such debt is a liquidated sum payable immediately or at a certain future time; and third is, petitioner shall file the petition before the expiration of three months from the date of the act of insolvency.

23. As far as the first and second conditions stated supra are concerned, it is the case of petitioner that the first respondent borrowed Rs. 60,000/- on 20.05.2015 and another Rs. 60,000/- on 26.05.2015 from him and executed a promissory note on the respective dates, and that he filed suits on the basis of promissory notes for recovery of debt. On the other hand, respondents 1 and 2 denied the case of the petitioner.

24. In view of the above rival contentions and the first and second requirements stated above, the initial burden is on the petitioner to clinchingly establish that the first respondent borrowed Rs. 60,000/- and another Rs. 60,000/- from him under two separate promissory notes.

25. In order to substantiate the case, the petitioner himself was examined as P.W.1. He reiterated the averments of the petition in his chief examination affidavit. The respondents 1 and 2 cross-examined him. During cross-examination of PW1, respondents 1 and 2 focused on three aspects: one is the avocation of the petitioner; the second is about the first respondent; and the third is about I.P.22/2015 and I.P.7/2016.

26. In so far as the first aspect is concerned, PW1 testified that he is agriculturist, having Ac. 1.40 cents of agricultural lands in his name. Further, he testified that previously, he did money lending business, but there are no documents with him relating to the previous finance transactions with others. It is relevant to note that the occupation and financial capacity of petitioner are not disputed by respondents 1 and 2.

27. In so far as the second aspect is concerned, PW1 deposed that the first respondent is his villager and that he is an agriculturist, having agricultural lands to the extent of Ac. 2.00 cents or Ac.3.00 cents of land. Further, PW1 deposed that he has acquaintance with the first respondent since his childhood. PW1 further deposed that the first respondent has three children, and Shaik Prasad is his younger son, and that after their marriages, he allotted some agricultural lands to them, and both of his sons put up separate families. The occupation, number of children of first respondent has, and relationship of Shaik Prasad with the first respondent are not in dispute in the present case.

28. In so far as the third aspect is concerned, PW1 stated in his cross examination that Shaik Prasad, son of first respondent, filed I.P. 22/2015 on the file of Senior Civil Judge, Bapatla, wherein he (PW1) was one of the respondents. Further, he stated in his cross examination that Ponnaganti Pulla Rao, who is petitioner in I.P. also filed I.P. 7/2016, and he is not a relative of PW1.

29. In addition to the above, respondents 1 and 2 put their defence by way of suggestions. Of course, PW1 denied the same.

30. Except for the above, respondents 1 and 2 did not pose any questions regarding transactions under promissory notes. Of course, petitioner filed two suits on foot of two separate promissory notes for the recovery of money and obtained decrees.

31. Besides the oral evidence, the petitioner heavily relied upon documentary evidence, Exs.P1 to P4. Ex.P1 is the reply notice dated 18.9.2015. Ex.P2 is the registration extract of the alleged registered gift deed dated 30.7.2015. Ex.P3 is the certified copy of the judgment and decree in O.S.102/2015 dated 9.12.2015 on the file of the Principal Junior Civil Judge, Ponnur. Ex.P4 is the certified copy of the judgment and decree in O.S.103/2015 dated 9.12.2015 on the file of the Principal Junior Civil Judge, Ponnur.

32. Admittedly, certified copies of promissory notes connected to suits in O.S.102/2015 and O.S. 103/2015 were not filed by the petitioner. However, certified copies of those promissory notes have been filed by respondents 1 and 2. They are marked as Exs.R3 and R6.

PROMISSORY NOTES/EXS.R3 AND R6:-

33. The petitioner contended that the first respondent borrowed Rs. 60,000/- on 20.5.2015 and Rs. 60,000 on 26.5.2015 and executed

promissory notes on respective dates. In contrast, respondents 1 and 2 refuted borrowing amounts and the execution of promissory notes, contending that petitioner herein, Ponnaganti Pulla Rao, Punna Hema Sundara Rao, highhandedly obtained the signatures of first respondent by putting him under threat with malafide intention to grab the property instead of taking action to recover the debts from Shaik @ Noor Basha Prasad (younger son of first respondent), and therefore, promissory notes are not valid and enforceable under law.

34. Except for the bold allegations above, respondents 1 and 2 did not aver either in the pleadings or evidence about the date and place of the incident. Whatever that, if really promissory notes were obtained by putting under threat, for the recovery of debts of another, no prudent person would keep silent without lodging a report, placing the matter before elders, or issuing legal notice. In the present case, the first respondent never contended that he lodged a report or placed the matter before elders regarding the incident. Surprisingly, he kept quiet until he received legal notice from the petitioner. Moreover, he did not offer any explanation for why he kept silent for all these years without taking any of the above steps. This conduct of the first respondent does not probalize his defence. Hence, the contentions of respondents 1 and 2 cannot be countenanced.

DECREES IN O.S.102/2015 AND O.S.103/2015:

35. It is the case of petitioner that during the pendency of present I.P., suits filed by him were decreed in his favour. To prove the same, he filed certified copies of judgment and decree in O.S.102/2015 and O.S. 103/2015; they are marked as Exs.P3 and P4. It is matter on record that respondents 1 and 2 also filed certified copies of judgment and decree in

O.S. 102/2015 and O.S. 103/2015, and they are marked as Exs.R4 and R7. Therefore, Exs.P3 and P4 and R4 and R7 are similar.

36. Decree in O.S. 102/2015 (Ex.P3=R4) and the decree in O.S. 103/2015 (Ex.P4=R7) are found to disclose that the petitioner filed both suits against the first respondent herein for recovery of money on foot of promissory notes, separately. Further, they disclose that both suits were decreed in favour of the petitioner and against the first respondent herein.

37. In order to make the court discard both the decrees, respondents 1 and 2 argued on four aspects: one is, petitioner obtained the decrees fraudulently; second is, they are ex parte decrees; third is, the second respondent is not party to those suits; and fourth is first respondent has taken steps to set aside the ex parte decrees.

Whether decrees were obtained fraudulently ?

38. In so far as the first contention of respondents 1 and 2 is concerned, they strenuously contended that petitioner obtained decrees in O.S. 102/2015 and O.S. 103/2015 fraudulently, and therefore, the said decrees are not enforceable.

39. Respondents 1 and 2 have taken similar pleas in the counter of the first respondent by contending that petitioner obtained decrees fraudulently by putting the first respondent under threat not to attend court. For a better appreciation of the case, relevant portion in the pleadings of 2nd respondent (counter) are reproduced hereunder:

"4..... filed false suits against the 1st respondent on the file of Prl. Junior Civil Judge, Ponnur and also one I.P.No.7/2016 on the file of Hon'ble Senior Civil Judge, Guntur with false allegations and threatened with dire consequences all the families of 1st respondent not to attend the courts and obtained the decrees against the 1st respondent fraudulently and mischievously....."

"7. exparte decrees obtained by the petitioner against the 1st respondent on the file of Prl. Junior Civil Judge Court, Ponnur, i.e., O.S.No.102/2015 and O.S.No.103/2015 are fraudulent and unlawful by threatening him not to attend the court using unlawful and 3rd decree methods to leave the village....."

40. It reveals from the above that the first respondent could not attend the court in O.S. 102/2015 and O.S. 103/2015 as he was put under threat not to attend the court.

41. Contrary to the above, respondents 1 and 2 have taken different contention in their written arguments, as follows,

"It should be noted that, the petitioners obtained ex-parte decrees in O.S.Nos.101/15, 104/15, 105/15, as well as 102/15 & 103/2015. That is because R1 did not receive any court notices regarding the aforementioned suits."

42. Thus, above both contentions of respondents 1 and 2 are diagonally opposite. Taking either of the contentions into consideration, the respondents 1 and 2 did not place any material to substantiate the same, except raising bold allegations without basis. Whatever the contentions on obtaining decrees fraudulently or by not serving summons, 1st respondent need not keep silence without agitating the same by filing petitions to set aside the exparte decree. In view of the circumstances, it is held that there are no merits in the contention of the respondents.

EXPARTE DECREES:

43. As seen from certified copies of decrees (Exs.P3 = R4 and Exs.P4 = R7), they disclose that the petitioner obtained decrees in O.S. Nos. 102/2015 and 103/2015 on the file of Principal Junior Civil Judge, Ponnur, against the first respondent herein, and they are exparte decrees. Respondents 1 and 2 strenuously contended that petitioner obtained an exparte decree and, therefore, no validity can be given to them.

44. In the eye of the law, exparte decrees are enforceable and binding in nature, similar to decrees on contest. Therefore, on the ground that decrees in O.S. Nos. 102/2015 and 103/2015 are exparte, they cannot be discarded.

2nd Respondent is not a party to the suits O.S. NOS. 102/2015 and 103/2015:

45. Respondents 1 and 2 strenuously contended that the second respondent is not a party to those suits, and therefore, they are not binding on him. According to the petitioner, the first respondent borrowed money from him under two promissory notes, and hence, he filed two suits for recovery of money. Admittedly, the second respondent is not a co-obligant or surety to the debts borrowed by the first respondent under promissory notes/Exs.R3 and R6. So, he is totally stranger to the promissory note transactions. Therefore, there is no need to implead him in those suit proceedings.

46. In view of the above, simply because second respondent is not party to the suits in O.S. Nos. 102/2015 and 103/2015, decrees passed against first respondent cannot be discarded. Hence, the contentions of respondents 1 and 2 are not tenable.

Steps taken by the first respondent to set aside the exparte decrees :

47. It is the specific case of respondents 1 and 2 that the first respondent has taken steps to set aside the exparte decrees, and therefore, the subject matter of said suits is sub-judice before the concerned court, and hence, the debt is not proved in the present suit.

48. Admittedly, respondents 1 and 2 stated in their pleadings that the first respondent filed applications before the Principal Junior Civil Judge,

Ponnur, for setting aside the exparte decrees. For a better appreciation of the case, relevant portion of pleadings (counter) of second respondent are reproduced hereunder:

"The first respondent also preferred the applications to set aside the exparte decrees and are pending on the file of Prl. Junior Civil judge Court, Ponnur."

49. In contrast to the above, the first respondent (RW1) fairly admitted in his cross-examination that he did not file any petition for setting aside the exparte decrees. For a better appreciation of case, relevant portion in the evidence of RW1 is reproduced hereunder:

"It is true that I did not filed any petitions before the concerned courts for setting aside of decrees passed against me."

50. Thus, RW1 (first respondent) fairly admitted that he did not file any applications to set aside the exparte decrees in O.S. Nos. 102/2015 and 103/2015, though it was pleaded in the counter that he filed petitions.

51. Whatever the contention of the respondents 1 and 2 about the filing of petitions to set aside the exparte decrees, till now the decrees have not been set aside and are in force and executable. Hence, the contentions of respondents 1 and 2 cannot be considered.

52. Thus, all the contentions of respondents 1 and 2 are not tenable.

53. The evidence of PW1 and documentary evidence, i.e., Exs.P3 and P4 and Exs.R2 to R7, clinchingly established the debt of first respondent.

Evidence of respondents 1 and 2:

54. In order to make the court disbelieve the case of the petitioner and disprove the debt, respondents 1 and 2 are examined as RWs 1 and 2. They reiterate the averments of counter of second respondent in their respective chief examination affidavits.

55. Besides the self-testimony of RWs 1 and 2, they relied upon documentary evidence Exs.R1 to R7. Ex.R1 is the certified copy of petition in I.P. 22/2015 on the file of the Senior Civil Judge's Court, Bapatla. Ex.R2 is certified copy of plaint in O.S.102/2015 on the file of Prl. Junior Civil Judge's Court, Ponnur. Ex.R3 is the certified copy of pronote filed by petitioner in O.S.102/2015 and its connected papers. Ex.R4 is the certified copy of judgment and decree in O.S.102/2015 on the file of Prl. Junior Civil Judge's Court, Ponnur. Ex.R5 is the certified copy of plaint in O.S.103/2015 on the file of Prl. Junior Civil Judge's Court, Ponnur. Ex.R6 is the certified copy of pronote filed by petitioner in O.S.103/2015 and its connected papers. Ex.R7 is the certified copy of judgment and decree in O.S.103/2015 on the file of Prl. Junior Civil Judge's court, Ponnur.

56. Even Exs.R2 to R7 filed by respondents 1 and 2 also disclose the legally enforceable debt of the first respondent herein.

57. From the beginning, respondents 1 and 2 would contend that the younger son of first respondent by name Shaik @ Noor Basha Prasad sustained losses in the business, and as such, he filed I.P. 22/2015 against 103 persons, including the petitioner herein, but the petitioner herein, Punna Hema Sundara Rao, Ponnaganti Pulla Rao, obtained the signatures of first respondent on blank signed promissory notes by putting him under threat, to grab the property of first respondent instead of collecting dues from Shaik @ Noor Basha Prasad.

58. To prove their contentions, respondents 1 and 2 heavily relied upon a certified copy of petition in I.P.22/2015 (Ex.R1). It reveals that Shaik @ Noor Basha Prasad filed an I.P. against 103 persons, including the petitioner herein. On the other hand, petitioner (PW1) admitted the same in

his cross-examination about the filing of I.P. 22/2015 and allowed the same by adjudging Shaik @ Noor Basha Prasad as insolvent.

59. Even on considering Ex.R1 and evidence of PW1 regarding the allowing of I.P. 22/2015, at best, it establishes the filing of I.P. and allowing the debtor I.P. Except that, it can not be connected to the present IP or transaction herein.

60. However, except self-testimony of RWs 1 and 2, they did not place any material to establish that petitioner, Punna Hema Sundara Rao and Ponnaganti Pulla Rao obtained the signatures of first respondent on blank, signed promissory notes by putting him under threat. Based on the self-testimony of respondents 1 and 2, their version cannot be believed. Thus, respondents failed to establish their defence.

Finding on proof of debt:

61. On the other hand, the petitioner established the lending amount, execution of promissory notes, and enforceable debt, through oral and documentary evidence. Hence, it is held that the petitioner established the debt of the first respondent. Thereby, petitioner complied with the first and second requirements stated above.

ACT OF INSOLVENCY :

62. As far as the third requirement is concerned, a petition shall be filed within three months from the date of the act of insolvency. No doubt, the present petition was filed within three months from the date of execution of the Gift deed. Now the question is, whether the execution of the gift deed amount to an act of insolvency or not?

63. Section 6 of the Act envisages an act of insolvency. The entire Section 6 is not relevant to the creditor insolvency petition. But Section 6(1)

(a) to (e) is relevant. As far as the present case is concerned, sections 6(1)(a) and (b) are most relevant to the present facts of the case.

64. To adjudge the debtor as insolvent, the petitioner (creditor) shall establish the act of insolvency laid down under Section 6(1)(a) and (b) of the Act. For better appreciation of the case, relevant provisions are reproduced hereunder:

6. Acts of insolvency.—(1) A debtor commits an act of insolvency in each of the following cases, namely:—

(a) if, in India or elsewhere, he makes a transfer of all or substantially all his property to a third person for the benefit of his creditors generally;

(b) if, in India or elsewhere, he makes a transfer of his property or of any part thereof with intent to defeat or delay his creditors;

(c) if in India or elsewhere, he makes any transfer of his property, or of any part thereof, which would, under this or any other enactment for the time being in force, be void as a fraudulent preference if he were adjudged an insolvent;

65. As far as Section 6(1)(a) is concerned, the meaning of transfer of benefit to creditors generally is that it transfers all or substantially all of his property to a third person for the benefit of his creditors generally or to composite debtors executing for the purpose of paying creditors. This situation arises when any transfer is made to a third party for the benefit of creditors generally, as covered under (a) of the Act.

66. As seen from the Gift deed/Ex.P2, property was not transferred to his creditors as envisaged under Section 6(1)(a) of the Act. So, Section 6(1)(a) is not applicable to the present case.

67. As per the Section 6(1)(b) of the Act, where a transfer of his property or of any part thereof is made with intent to defeat or delay his creditors, it amounts to an act of insolvency. In the present case, the

petitioner would contend that the first respondent alienated the schedule properties in favour of second respondent under a registered Gift deed dated dt.30.07.2015 with an intention to defeat and delay his claim, and thereby, the first respondent committed an act of insolvency, and hence, the first respondent is liable to be adjudged as insolvent. So, the said provision is relevant to the present case.

68. It is the case of petitioner that, with intend to defeat and delay his claim, the first respondent gifted his property under registered gift deed dt.30.7.2015/Ex.P2. On the other hand, learned counsel for respondents 1 and 2 strenuously opposed the petitioner's claim contending that previously, there was an oral partition between the first respondent and his children and that the second respondent has been in possession and enjoyment of the petition schedule property, and subsequently, the present gift deed was executed pursuant to the earlier oral partition, and therefore, the schedule property is not at all the property of the first respondent.

Oral partition contended by the respondents:

69. In fact, nowhere in the counter, the second respondent has taken the plea of earlier oral partition as argued by the learned counsel. However, it is stated in the counter that the petition schedule property was given to the second respondent by way of gift deed. It is worth while to reproduce the relevant portion of the counter herein:

"The 1st respondent is having house and landed properties and were given to the children. The petition schedule property is given to the 2nd respondent by way of Gift Deed vide Doc.No.3643/2015 dated 30.7.2015."

70. Except the above, nowhere in the pleadings, respondents taken the plea of oral partition. It is well settled that in the absence of pleadings,

any amount of evidence cannot be looked into. In view of settled law, the arguments of respondents 1 and 2 cannot be considered.

71. For argument's sake, the arguments of respondents 1 and 2 are considered, now the question before the court is, whether they proved their version ?

72. To substantiate their contentions, learned counsel for respondents 1 and 2 relied on the evidence of PW1, contending that PW1 himself admitted oral partition and therefore, the petitioner's claim is not maintainable.

73. In view of the arguments of learned counsel, the evidence of PW1 is to be examined carefully. In the cross-examination, Pw1 testified that the first respondent allotted some agricultural lands to his sons after their marriages. Except that, he never deposed an earlier oral partition. For a better appreciation of the case, the relevant portion of evidence of PW1 is reproduced hereunder:

"It is true that after marriages of sons of R1, R1 has allotted some agricultural lands to them and both of his sons put up separate families."

74. It is understood from the above portion of evidence that 1st respondent allotted some agricultural lands to his sons and put up their separate families after their marriages. Except the above, PW1 never admitted in his cross examination that first respondent and his sons partitioned their properties orally, and subsequently, the gift deed/Ex.P2 was executed pursuant to the oral partition. Moreover, respondents 1 and 2 did not place any material connecting the gift deed to the oral partition or the above-stated evidence of PW1.

75. Even as seen from the certified copy of the gift deed/Ex.P2, out of love and affection, the first respondent conveyed schedule property to the

second respondent. Further, it reveals, the schedule property was delivered on the date of gift deed itself. Except that, gift deed/Ex.P2 does not disclose earlier oral partition or execution of gift deed pursuant to earlier partition. Therefore, the possession and enjoyment of second respondent prior to the gift deed or the execution of gift deed pursuant to an earlier partition cannot be believed. Thus, recitals of gift deed/Ex.P2 falsify the contentions of respondents 1 and 2.

76. In view of the circumstances, the contentions of learned counsel are not sustainable. Further, it is held that the first respondent is the owner of the petition schedule property, and he executed a registered gift deed dated 30.7.2015/Ex.P2. Now the question before the court is, whether said alienation comes any act of insolvency ?

77. The petitioner would contend that the first respondent executed a gift deed/Ex.P2 with intend to defeat and delay his claim and thereby, he committed act of insolvency..

Other properties owned by first respondent and some of alienations:

78. To defeat the claim of the petitioner, learned counsel for respondents 1 and 2 strongly contended that the first respondent has some other properties and has also gifted some of them to his daughter-Shaik Ashabi, and the children of his younger son, and therefore, the first respondent shall not be adjudged insolvent.

79. The learned counsel for respondents 1 and 2 rightly contended that when a person has sufficient other properties, the sale of one of the properties alone does not amount to act of defeating the creditors claim³. As seen from the counter, nowhere second respondent would contend that the

3 M.Sriramulu Vs. P.Singiah ; 1967 (2) AWR 329 and Dandamudi Chakradhararao and another Vs. Pidikiti Koteswararao and another : 1996 (3) ALT 34

first respondent had other properties or alienated some of his properties to others. Even in the cross-examination of PW1, they did not pose any question in that regard. First time, in the course of arguments learned counsel would argue that the first respondent had some other properties and alienated some of them. For a better appreciation of the case, relevant portion in the written arguments are reproduced hereunder:

"In this context, it is important to note that R1 registered a property which belongs to R2 on 30.7.2015. He also registered gift deeds for his younger son's children's who are the minors i.e., Shaik Manisha, Shaik Meera Jasmin vide Doc.No.3645/2015 making his younger son as their guardian, and R1 executed another gift deed to his daughter, Shaik Ashabi vide Doc.No.3644/2015 on the same day dated 30.7.2015."

80. Admittedly, there is no above plea in the counter. Even the document referred to above have not been filed. It is well settled that in the absence of pleadings, no amount of evidence can be considered as stated above. Hence, the contentions of learned counsel are not tenable.

81. Turn to the contentions of petitioner, it is already stated above that the petitioner established the debt of the first respondent. It is not the case of respondents 1 and 2 that, after the gift deed/Ex.P2, the first respondent discharged the whole or part of the debt of petitioner. Thus, the debt of the first respondent due to the petitioner is in existence even after the execution of gift deed/Ex.P2. Instead of obeying the decrees by discharging debt, the first respondent executed a gift deed denying promissory notes and attributed untenable allegations, though they were qualified by the decrees.

82. All the above facts go to show the conduct of the first respondent that he alienated the property to defeat and defraud his creditors, including the petitioner.

Finding on act of insolvency:

83. All the above facts and circumstances establish that the act of the first respondent in executing register gift deeds/Ex.P2, by ignoring and denying the debt, which was qualified by decree, constitutes an act of insolvency as envisaged under Section 6(1)(b) of the Act.

Whether the present petition is barred by limitation?

84. It is not out of place to mention that learned counsel for respondents 1 and 2 would argue this I.P. is barred by limitation as it was filed in the year 2016 though the gift deed was executed on 30.7.2015. In view of the arguments of learned counsel, record has to be perused carefully. Admittedly, the gift deed/Ex.P2 was executed on 30.7.2015, whereas the present I.P. was filed on 5.10.2015 vide C.F.R.No.11959/5.10.2015. But it was registered as I.P. in 2016. A creditor insolvency petition must be presented within three months from the date of the act of insolvency (alienation of property). It shows that the present I.P. is presented within limitation. Hence, the arguments of learned counsel are not tenable.

Finding on the Point No.1

85. In view of the above stated facts and circumstances and aforesaid discussion, it is held that the first respondent is liable to be adjudged as insolvent. Accordingly, this point is settled.

RESULT:

86. In the result, the petition is partly allowed by adjudging the first respondent as insolvent. The period of discharge is six months from the date of this order. The petitioner is at liberty to move an application, after compliance with Sections 45 to 50 and 54-A of the Act, to annul the transfer

of immovable property under Sections 53, 54, or 4 of the Act. The petition schedule property is vested with Official Receiver. The office is directed to send a copy of this order to the District Collector, Guntur, for making Gazette notification in compliance with Section 30 of the Provincial Insolvency Act.

Typed to my Dictation, corrected and pronounced by me in the Open Court, on this the 22nd day of July, 2023.

Y. GOPALA KRISHNA,
I Addl. Senior Civil Judge,
Guntur.

APPENDIX OF EVIDENCE

WITNESSES EXAMINED

For Petitioner:

P.W.1 : Bathina Rama Krishna

For Respondents:

R.W.1 : Shaik Vali @ Shaik Masthan Vali

R.W.2 : Shaik Siva

DOCUMENTS MARKED

For Petitioner:

Ex.P1 : Reply notice dated 18.9.2015.

Ex.P2 : Registration extract of alleged registered gift deed dt.30.7.2015.

Ex.P3 : Certified copy of judgment and decree in O.S.102/2015 dt.9.12.2015 on the file of PJCJC, Ponnur.

Ex.P4 : Certified copy of judgment and decree in O.S.103/2015 dt.9.12.2015 on the file of PJCJC, Ponnur.

For Respondents:

Ex.R1 : Certified copy of petition in IP.22/2015 on the file of Senior Civil Judge's Court, Bapatla.

Ex.R2 : Certified copy of plaint in O.S.No.102/2015 on the file of Prl. Junior Civil Judge's Court, Ponnur.

Ex.R3 : Certified Copy of Pronote filed by petitioner in O.S.102/2015 and its connected papers.

Ex.R4 : Certified copy of judgment and decree in O.S.102/2015 on the file of Prl. Junior Civil Judge's Court, Ponnur.

Ex.R5: Certified copy of plaint in O.S.103/2015 on the file of Prl. Junior Civil Judge's Court, Ponnur.

Ex.R6: Certified copy of Pronote filed by petitioner in O.S.103/2015 and its connected papers.

Ex.R7: Certified copy of judgment and decree in O.S.103/2015 on the file of Prl. Junior Civil Judge's Court, Ponnur.

Y. GOPALA KRISHNA,
/ Addl. Senior Civil Judge,
Guntur.

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